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EXAMINER

MARKS, CHRISTINA M

ART UNIT

PAPER NUMBER

3713

DATE MAILED: 11/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/975,099

Applicant(s)

GOWAN ET AL.

Examiner

C. Marks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Information Disclosure Statement

The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

Claim Objections

The objection to claims 2-8 has been withdrawn due to the amendment filed 09 September 2003.

The objection to claims 45-55 has been withdrawn due to the convincing argument filed 09 September 2003 in the corresponding amendment.

Claim Rejections - 35 USC § 102

The rejections of claims 1-5 and 34-35 as being anticipated by Rooks (US Patent No. 5,221,081) have been withdrawn due to the amendment filed 09 September 2003.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-5 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooks (US Patent No. 5,221,081) in view of Meyers et al. (US Patent No. 3,677,544).

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Rooks disclose a vertical ball tossing apparatus with a support frame (FIG 2, reference 11) and a plurality of launch devices (FIG 2, reference 12, 13, 14) arranged in a two-dimensional array. The balls are launched according to a launch sequence that is determined randomly (Column 1, lines 8-11). The device includes a biasing member in the form of a spring for projecting the ball from the device (FIG 3, reference 22) and a release device for retaining the spring member in a loaded position and for releasing the spring member to project the ball (FIG 3, reference 27). Likewise, the launch device comprises a coil spring disposed within a cylinder (FIG 3).

The balls are loaded by the user into a plurality of loaded positions, wherein the spring rod determines the loaded position to correspond to a different launch height (Column 4, lines 11-15). The launch device also includes a carrier device coupled to the spring (FIG 3). Rooks further states that by the rotation of the adjuster cup about the threaded support boss, adjustable deflection and deformation of the suction cup is permitted in order to alter its adhering ability. By doing this, the release of the springs can be at adjustable time intervals subsequent to securing the cup (Column 4, lines 50-60). Thus, by using the method disclosed by Rooks and rotating each suction cup in sequential order, Rooks provides a means for sequentially activating the launch devices.

Rooks; however, does not disclose having at least two launch devices arranged along each dimension. Thus, the only remaining difference from the instant claims and the above taught reference lies in the provision of a plurality of launch devices along each dimension. However, it has been long considered to be within ordinary skill in the art to duplicate elements and their corresponding functions. One of such skill would readily recognize that the provision of a plurality of launch devices along each dimension would serve to enhance the batter training apparatus and ensure that the batter gets adequate training in all of the batting zones that

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he/she would normally encounter. As such, the provision of a plurality of launch devices along each dimension would have been obvious to one of ordinary skill in the art to provide an enhanced batting training apparatus.

Furthermore and in addition, Meyers et al. also support the provision disclosed above. Meyers et al. disclose a batting practice device that serves as the same function of Rooks, to train the batter to hit a baseball. Meyers uses a number of identical pitching devices that dispatches balls to a user that are inside, outside, and center types (Column 1, lines 17-25). Because the device of Meyers et al. pitches the ball from a distance, the entire area of the strike zone is covered and Meyers et al. teach such functionality is desirable in order to properly train the batter. Meyers et al. disclose that because the delivery pattern is varied in such a way that the batter will be generally unaware of the forthcoming delivery, the batter will train reflexes to respond to all types of deliveries in all types of pitches (Column 1, lines 17-25). Thus, the device of Meyers covers the strike zone from front to back.

The definition and application of a strike zone is well known in the art and training batters in an entire strike zone would thus be evident. Therefore, it would have been obvious to one of ordinary skill in the art to apply the teachings of Meyers et al. to Rooks. By applying these teachings, it would be apparent to one of ordinary skill in the art to use multiple identical devices that cover the depth as well as width of the strike zone, as disclosed by Meyers et al., to aid in better training the batter. By applying these teachings, one of ordinary skill in the art would understand that by multiplying the apparatus of Rooks to employ more than one apparatus, the entire strike zone would be covered (front to back and left to right), as taught by Meyers et al. through the pitching function. Even though Rooks already uses multiple launchers to cover a part of strike zone (left to right), the entire strike zone is not covered as only a single line of the base is used to train the user.

The Rooks setup is deficient to the teaching of Meyers et al. and that which is known in the art, as it does not cover the entire strike zone front to back by its use of multiple launchers (it only covers right to left). Thus, one of ordinary skill in the art would be motivated to implement more than a one of the pitching apparatuses disclosed by Rooks, to create an array with more than one launch device in each dimension thereby following the teachings of Meyers et al. to cover the entire strike zone and pitching types. By using multiple devices, the entire depth of the strike zone would be covered in the manner that Meyers et al. covers it by pitching the ball vertical. Because of the functionality of Rooks in pitching horizontally, incorporating more than one device to cover such a zone would be evident to a skilled artisan to obtain the desired training shown by Meyers et al. As discussed above, this would serve to cover an entire strike zone, as taught to be desirable by Meyers et al., in order to train the user for all types of deliveries thus motivating a skilled artisan to implement the above stated structure.

Claims 6, 7, 11-12, 14-18, 45 and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooks (US Patent No. 5,221,081) in view of Meyers et al. (US Patent No. 3,677,544).

What Rooks and Meyers et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Rooks discloses a plurality of engaging structures adapted to engage the release device to facilitate multiple loaded positions of the carrier (Column 2, lines 66-68; Column 3, lines 1-16). Rooks does not disclose that this engaging structure is connected to the carrier. However, it would have been obvious to one of ordinary skill in the art as a design choice to connect the two pieces together in order to have the engaging surface release with the carrier. As currently constructed in Rooks, the engaging surface is attached to the spring and not the carrier. As a

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result, it would be plausible to the skilled artisan that the release could cause a misbalance between the spring and the carrier, thus creating a non-stable launch wherein the ball could come out unevenly. As a result, a skilled artisan would be motivated to correct this deficiency by engaging the carrier. Though engaging the carrier would have an affect on the height of the ball in the manner it is controlled by Rooks, the Examiner maintains that it would be well within the knowledge of a skilled artisan to understand how to incorporate the carrier into the release device while maintaining the integrity and intent of the Rooks patent and such methods to do so would be obvious to such an artisan. Therefore, one would be motivated to incorporate this design choice in order to create a sturdier device for the carrier, as it would be enacted in conjunction with the release device.

Furthermore, Rooks does not disclose a handle coupled to the apparatus. It would have been obvious to one of ordinary skill in the art to add a handle to the device of Rooks, as the device is axiomatically portable. One of ordinary skill in the art would be motivated to incorporate a handle into the device of Rooks to provide the user with a means to easily carry the device in order to be able to practice in a plurality of places. As currently constructed, the device of Rooks would require an awkward holding position by the user, with no solid grip, or the use of two hands. By adding a handle, the device would be much easier to carry, as well as provide the user with a better grip. The addition of such would be a non-critical design choice motivated by adding a convenient, more comfortable manner for the user to carry the device whilst providing a grip that would reduce the chance of the user dropping the device.

Rooks also does not disclose that the device can be recessed into the floor. While such a modification would impede access to the suction cups and adjuster cup, the Examiner maintains such an issue does not serve to completely disarm such a possibility and the asserts that such a mounting manner would still be obvious to one of ordinary skill in the art. It would

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have been obvious to one of ordinary skill in the art to allow for the device to be recessed into the floor if desired by the user. One of ordinary skill in the art would be motivated to this as to provide a sturdier device, as the device would not be susceptible to the wear and tear of being completely exposed to the user. As stated above the Examiner acknowledges the possible problems cited with such a modification; however, the Examiner maintains that it would be well within the knowledge of a skilled artisan to understand how to mount the apparatus in a recessed manner while maintaining the integrity and intent of the Rooks patent and such methods to do so would be obvious to such an artisan. A skilled artisan would recognize alternative ways of engaging the device such as pressing down on the device from the carrier and turning to engage both the release device and adjuster cup. A further alternative, also within the realm of a skilled artisan, would be to automate the release. One of ordinary skill in the art would understand and be well enabled to convert the mechanical process of Rooks into an automated controlled process and such knowledge is notoriously well known in the art. Any skilled artisan is capable of taking a mechanical process and automating it and would be motivated to do it for a variety of reasons, the least being increasing the reliability of the device while reducing input required by the user. Motivation for making these adaptations to Rooks in order to mount the device in a recessed floor space lies in the fact that this mounting would provide a sturdier device that would not be susceptible to the wear and tear of having the cylinders and working parts abutting from the ground wherein such risk factors include the user tripping on the device or damaging the device by accidentally stepping on or running into the abutted cylinders.

Rooks discloses the device is adaptable to be placed on top of home plate (FIG 1). Though Rooks does not explicitly disclose that the support frame includes indicia of home plate, it would have been obvious to one of ordinary skill in the art to incorporate such an indicia. One

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of ordinary skill in the art would be motivated to implement the non-critical design choice of adding a home plate indicia based upon the fact that the preferred embodiment is using the device over home plate and when the device is used elsewhere, such an indicia would give the users a feeling of batting at home plate even when the device is being used in environments other than the preferred embodiment.

Rooks does not disclose embodying the device within a top deck; however, such a design choice would have been obvious to one of ordinary skill in the art as it would have protected the launch devices from abuse by the user. It is well known in the art to provide housing to essential components and devices in order to protect them from users who are known to be somewhat abusive to devices. By encasing the devices within a top deck and a support frame, the functionality of the device would be preserved while at the same time, the risk of the launch devices being damaged from being exposed to the user would be eliminated. One of ordinary skill in the art would be motivated to encase these devices as it would provide a level of protection to them wherein they would not be at as high of a risk for damage by the batter accidentally stepping on them, running into them, or damaging them out of frustration, a flaw that is evident to one of ordinary skill in the art with the present design of Rooks.

Regarding claims 45 and 46, it is notoriously well known in the art that a method carried out manually can be carried out by an electronic device that is controlled by code embodied on a computer-readable medium and thus the automation of such a task would have been obvious to one of ordinary skill in the art. Consequently, the automation of the method for launching the balls in accordance with a sequence and height would have been obvious over the disclosure of Rooks.

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Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooks (US Patent No. 5,221,081) in view of Meyers et al. (US Patent No. 3,677,544) further in view of Ciluffo et al. (US Patent No. 5,857,451).

What Rooks and Meyers et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Rooks discloses a plate member serving as a carrier that is used in the launch device that is embodied inside a cup for holding the balls prior to launch. Rooks does not disclose the cup has conical interior surface for holding balls of varying diameters or that the cup comprises a plurality of stepped rings.

Ciluffo et al. teaches that it is desirable in a throwing device that the device not be limited to one sport (Column 1, lines 49-51). Ciluffo et al. teaches of a device that can throw objects such as baseballs, softballs, tennis balls, squash balls, handballs as well as disc objects like clay pigeons and hockey pucks in a single apparatus by allowing for conversion (Column 1, lines 60-67; Column 2, lines 1-2).

It would have been obvious to one of ordinary skill in the art at the time of invention to implement the teachings of Ciluffo et al. to adapt the Rooks device to accept objects from more than one sport. This would indeed require the cup to be altered via a design choice that would accommodate the teachings of Ciluffo et al. The manner in which these teachings were realized to support multiple balls would axiomatically be a design choice and absent a showing of criticality would be obvious to one skilled in the art. One would be motivated to make the incorporation of the Ciluffo et al. teachings into the Rooks device to provide an apparatus that would work not only for baseball but also for other sports, thus allowing the user to train many sports with one device making the device more economical and functional to the user. Ciluffo et al. discloses the importance of having a throwing device that not be limited to one sport and the

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Examiner contends that the manner in which the teachings were realized (i.e. support members, stepped interiors, conical shaping, expandable cup) would be a design choice. The motivation for the alteration lies in the fact that by providing a device that supports not only baseballs, but also balls for other sports, the user would be able to train many sports on one device while making the device more valuable to the user and adhering to the teaching of Ciluffo et al. The cylinder of Rooks serves as a cup to support the ball and without it's cupping, the device would not work, as there would be no means to support the ball on the beginning path of trajectory, thus it does carry the ball as part of the beginning of the launch. Without it, the ball would just roll off. Further, the Examiner contends that the cup (cylinder) supporting the ball would indeed need to be altered to launch balls of different sizes. For instance, the current cupping function would not support any ball smaller than a baseball, as it would roll around freely within the cup and not properly rest on the launcher. Thus, motivation exists to a skilled artisan to implement a conical shaping of the cup, in order to support all balls, as taught desirable by Ciluffo et al.

Claim 13 rejected under 35 U.S.C. 103(a) as being unpatentable over Rooks (US Patent No. 5,221,081) in view of Meyers et al. (US Patent No. 3,677,544) further in view of Meade (US Patent No. 5,294,109).

What Rooks and Meyers et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Rooks does not disclose a ball storage apparatus defined within the device.

Meade discloses a ball tossing apparatus that tosses the ball vertically in the air. Meade also discloses a ball storage apparatus for holding balls for the device.

It would have been obvious to one of ordinary skill in the art to incorporate a ball holding mechanism into the device of Rooks when embodied as discussed above with a protective top.

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By adding a protective top, a number of open areas would be available and it would be obvious to one of ordinary skill in the art as taught by Meade to provide ball storage. One would be motivated to do this in order to provide a place for the user to keep extra balls where they know where they will always be as well as in a convenient readily accessible location while adhering to the teachings of Meade in using ball storage to allow the users an extended ability to practice.

Claims 19-33, 36-44, and 47-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rooks (US Patent No. 5,221,081) in view of Meyers et al. (US Patent No. 3,677,544) further in view of Battersby et al. (US Patent No. 6,546,924).

What Rooks and Meyers et al. disclose, teach, and/or suggest has been discussed above and is incorporated herein.

Rooks discloses a system that launches balls into the air for the user to practice batting. Rooks discloses that the launch sequence can be controlled by the user based upon how a suction cup is attached to a surface and when. However, one of ordinary skill in the art would immediately recognize some issues that would arise from this design. First, two suction cups could go off at once and cause the player to become confused as to what to do. Likewise, a long delay may occur waiting for the suction cup to go off, thus causing an undue wait for the player. The Examiner identified above that it would be obvious to a skilled artisan to develop design alternatives to control the trigger of Rooks while maintaining the intent and functionality.

Battersby et al. disclose a ball-throwing machine with a method for sequentially launching a plurality of balls that has an electrical control system that can be programmed to store a pitch sequence (Column 3, lines 55-57). The device axiomatically has a processor (FIG 10) and memory that stores code and data (Column 12, lines 28-30) for the actions that will be required to execute such a sequence. The device also has a memory in the form of using a

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smart card that can store and retrieve previously input launch sequences from the user to avoid the user having to continuously re-enter them for launch execution (Column 13, lines 60-67; Column 14, lines 12-14). In this manner, the player can choose between a plurality of predefined launch sequences (Column 14, lines 15-19). The electronic control system can be used to program the type, speed and location of each pitch (Column 3, lines 56-57). Battersby et al. use a remote control device which serves as a user input device for receiving launch instructions generated remotely regarding a single launch from the user with a keypad to allow the user to input the sequence to be executed (FIG 11). The launch module used inside the throwing machine is responsive to the user input to execute one of a plurality of launch sequences (Column 3, lines 54-58). Alternatively, the throwing machine can be programmed to simulate a predetermined or a random launch sequence that would be axiomatically generated by a random sequence generator. The device allows predefined sequences to be used and allow the user to select between predefined and random sequences as well as inputting a launch sequence (Column 10, lines 58-67; Column 13, lines 61-65). The launch sequence is then received from the user and the launch module is responsive to each subsequent launch instruction to operate the launch of the next pitch type from the predetermined sequence of pitch types (Column 10, lines 63-67) or a user input subsequently representing a launch instruction (Column 10, lines 58-62).

It would have been obvious to one of ordinary skill in the art at the time of invention to incorporate an electronic control means as disclosed by Battersby et al. into the device of Rooks. Though Battersby et al. is directed at a pitch sequence, one of ordinary skill in the art would be motivated to apply these teachings to Rooks in order to provide a more updated and advanced and user friendly pitching apparatus. Therefore, one would apply the teachings of Battersby et al. to Rooks in order to use the electronic control to activate the (pitch) launch

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sequence instead of using suction cups. One could use these teachings of a user inputting a sequence to be executed in order to sequentially activate each of the launch devices. One would be motivated to incorporate these teachings into Rooks in order to automate the Rooks device electronically to correct the design flaws discussed above. By incorporating an electronic program that is used activate a single launch device to control the launch sequence, the player would not be presented with two balls at once or have to wait an unknown amount of time for the ball to launch. Through the teachings of automation of pitching devices as disclosed by Battersby et al., one of ordinary skill would be motivated to apply the teachings to the Rooks device in order to automate the launch devices and present the player with a variety of pitches from a variety of locations on the mat without the player having to endure the undue inconvenience of setting the suction cups, the possibility of long delays between launches, or the confusion of being presented with two launches at once. One of ordinary skill in the art would understand and be well enabled to convert the mechanical process of Rooks into an electronically controlled process and such knowledge is notoriously well known in the art. Any skilled artisan is capable of taking a mechanical process and automating it and would be motivated to do it for a variety of reasons, the least being increasing the reliability of the device and removing user burden. While the electronic controls of Battersby et al. do control features associated with the wheels, they also teach of a sequential means of launching balls. One of ordinary skill in the art would be motivated to automate the process of Rooks in order to eliminate the suction cups which as discussed above are not highly reliable and as further stated above, it is known by a skilled artisan that mechanical processes can be modified into automated processes. One would thus be further motivated to include the teachings of Battersby et al., merely directed to controlling the sequence of pitches, into the device of Rooks

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in order to create a more reliable and problem free launch device which provides a greater convenience to the user.

Regarding claims 47-55, it is notoriously well known in the art that a method carried out manually can be carried out by an electronic device that is controlled by code embodied on a computer-readable medium and thus the automation of such a task would have been obvious to one of ordinary skill in the art. Thus, the automation of the method for launching the balls disclosed by Battersby et al. in accordance with launching a plurality of balls would have been obvious over the disclosure of Battersby et al.

Response to Arguments

The Applicant's arguments directed towards claims 1-5 and 34-35 regarding the anticipation of Rooks in application to the newly amended claims has been considered and is persuasive. However, upon further consideration of the amended claims, they now stand rejected under 35 U.S.C. §103 as defined above.

In response to the Applicant's arguments that there is no motivation to modify the device of Rooks to integrate the carrier and engaging surfaces, the Examiner respectfully disagrees. As stated in the prior Office Action, one of ordinary skill in the art would be motivated to incorporate the carrier as part of the engaging surface to create a sturdier device for the carrier. As currently constructed in Rooks, the engaging surface is attached to the spring and not the carrier. As a result, it would be plausible to the skilled artisan that the release could cause a misbalance between the spring and the carrier, thus creating a non-stable launch wherein the ball could come out unevenly. As a result, a skilled artisan would be motivated to correct this deficiency by engaging the carrier. While the Examiner acknowledges the possible problems

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cited with such a modification, the Examiner maintains that it would be well within the knowledge of a skilled artisan to understand how to incorporate the carrier into the release device while maintaining the integrity and intent of the Rooks patent and such methods to do so would be obvious to such an artisan.

In response to the Applicant's arguments that there is no suggestion or motivation to provide Rooks with a top deck, the Examiner respectfully disagrees. As stated in the prior Office Action, it is well known in the art to provide ^{an encasement} ~~housing~~ to essential components and devices and one of ordinary skill in the art would be motivated to do this in order to protect them from users who are known to be somewhat abusive to devices. By encasing the devices within a top deck and support frame, the functionality of the device would be preserved while at the same time, the risk of the launch devices being damaged from being exposed to the user would be eliminated. Thus, the motivation lies in encasing these devices to provide a level of protection to them wherein they would not be at as high of risk for damage by the batter accidentally stepping on them, running into them, or damaging them out of frustration. In response to the Applicant's position that providing a top surface would impede access to the suction cups or adjuster cups, the Examiner respectfully disagrees as by adding a top, it would not impede access to the suction cups as it adding a top and a structure would not require covering up the small openings (15, 16, and 17) used to access the suction cups. The Examiner also respectfully disagrees that adding a top deck would hinder the pivotability of the mounting plate. The pivotability is based upon the base of the device and would not be hindered by adding a top. Likewise, even with a top and sides added, one of ordinary skill in the art would understand the release device could conceivably be engaged by pressing on the ball from the top and rotating, causing it to come into contact with the base in the same manner as using the openings to engage it.

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In response to the Applicant's argument that there is not motivation to add a handle to the device of Rooks, the Examiner respectfully disagrees as such a feature is a non-critical design choice. As stated in the prior Office Action, one of ordinary skill in the art would be motivated to incorporate a handle in order to provide the user with a means to easily carry the device. In response to the Applicant's position that the device has a small open structure that appears easy to grasp, the Examiner contends that adding a handle to the device (FIG 2) would indeed make it much easier to handle, as it would be difficult to grab the device across the board without using both hands. Adding a handle would provide a better grip thus reducing the chance that the users grip slips and they drop the device. In response to the device swinging freely if a handle were added, the Examiner is not persuaded that adding a handle to the device of the alternative embodiment would cause injury or damage.

In response to the Applicant's argument that there is no motivation to put the support frame into a recessed structure, the Examiner respectfully disagrees. The Applicant has cited the reason this would not be obvious is that such a modification would impede access to the suction cups and adjuster cup. The Examiner agrees that such an issue would occur when the device was mounted in a recessed manner; however, such an issue does not serve to completely disarm such a possibility and the Examiner further asserts that such a mounting manner would still be obvious to one of ordinary skill in the art. While the Examiner acknowledges the possible problems cited with such a modification, the Examiner maintains that it would be well within the knowledge of a skilled artisan to understand how to mount the apparatus in a recessed manner while maintaining the integrity and intent of the Rooks patent and such methods to do so would be obvious to such an artisan. A skilled artisan would recognize alternative ways of engaging the device such as pressing on the device from the carrier and turning to engage both the release device and adjuster cup. A further alternative,

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also within the realm of a skilled artisan, would be to automate the release. One of ordinary skill in the art would understand and be well enabled to convert the mechanical process of Rooks into an electronically controlled process and such knowledge is notoriously well known in the art. Any skilled artisan is capable of taking a mechanical process and automating it and would be motivated to do it for a variety of reasons, the least being increasing the reliability of the device. As stated in the prior Office Action, motivation for making these adaptations to Rooks in order to mount the device in a recessed floor space lies in the fact that, this mounting would provide a sturdier device and would not be acceptable to the wear and tear of having the cylinders and working parts abutting from the ground. This would reduce the possibilities of such things like the user tripping over the device and hurting either thyself or the device.

In response to the Applicant's argument that there is no motivation to add indicia of a home plate, the Examiner respectfully disagrees and maintains that such a feature is a non-critical design choice. As stated in the prior Office Action, one of ordinary skill would be motivated to add such indicia based upon the fact that the preferred embodiment is using the device over home plate and given that the device could conceivably be used away from an actual home plate, such an indicia would give the users a better feeling of batting at home plate when used in an environment other than the preferred environment. In response to the Applicant's position that the addition would be redundant, the Examiner points out that it has been identified the device can be used in other environments wherein the plate would be desirable, not redundant. The Applicant's argument that it would make it unnecessarily large is not convincing, as such an argument is not directed towards the actual merits shown by the rejection.

In response to Applicant's argument that Rooks and Ciluffo et al. do not teach or suggest a launch device including a cup having a conical interior surface, coupled to a coil spring for

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carrying balls of varying diameters, the Examiner respectfully disagrees. The Examiner cited the teachings of Ciluffo et al. disclosing the importance of having a throwing device not be limited to one sport and contends that the manner in which the teachings were realized (i.e. support members, conical interiors, adaptable or expandable cup) would be a design choice. The Applicant has not shown the criticality of the design choice, thus admitting the design choice would be obvious to one skilled in the art. The motivation for the alteration lies in the fact that by providing a device that supports not only baseballs, but also balls for other sports, the user would be able to train many sports on one device while making the device more valuable to the user and adhering to the teaching of Ciluffo et al. The cylinder of Rooks serves as a cup to support the ball and without it's cupping, the device would not work, as there would be no means to support the ball on the beginning path of trajectory, thus it does carry the ball as part of the beginning of the launch. Without it, the ball would just roll off. Further, the Examiner contends that the cup (cylinder) supporting the ball would indeed need to be altered to launch balls of different sizes. For instance, the current cupping function would not support any ball smaller than a baseball, as it would roll around freely within the cup and not properly rest on the launcher. Thus, motivation exists to a skilled artisan to implement a conical shaping of the cup, in order to support all balls, as taught desirable by Ciluffo et al.

In response to Applicants argument that there is no need for a protective top in Rooks, the Examiner respectfully disagrees and asserts this issue has been fully addressed above. Further as discussed above, one of ordinary skill would be inclined to encase the device for the reasons discussed above and put a base and a top on in order to frame the device of Rooks in to protect it. Thus, with the teachings of Meade regarding ball storage, one of ordinary skill in the art would be motivated to use this extra space created to store balls in order to allow the

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user to be provided with a place to keep extra balls wherein they will always know where they are and always have them with them.

In response to the Applicant's argument that the references do not teach of a launch module for sequentially activating the devices, the Examiner respectfully disagrees. Even though the references do address two different kinds of launch devices, their teachings are directed to controlling the launch of the ball in a batting practice apparatus, thus they are analogous. One of ordinary skill in the art would understand and be well enabled to convert the mechanical process of Rooks into an electronically controlled process and such knowledge is notoriously well known in the art. Any skilled artisan is capable of taking a mechanical process and automating it and would be motivated to do it for a variety of reasons, the least being increasing the reliability of the device. While the electronic controls of Battersby et al. do control features associated with the wheels, they also teach of a sequential means of launching balls. One of ordinary skill in the art would be motivated to automate the process of Rooks in order to eliminate the suction cups as they are not highly reliable and as stated above, it is known by a skilled artisan that mechanical processes can be modified into automated processes. One would thus be motivated to include the teachings of Battersby et al., merely directed to controlling the sequence of pitches, into the device of Rooks in order to create a more reliable and problem free launch device which is more friendly to the user.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

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MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to C. Marks whose telephone number is (703)-305-7497. The examiner can normally be reached on Monday - Thursday (7:30AM - 5:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teresa J Walberg can be reached on (703)-308-1327. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-930⁶~~2~~.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-1148.



cmm
November 18, 2003



Teresa Walberg
Supervisory Patent Examiner
Group 3700